Filed 5/16/19 Pullara v. Burchett CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CARL PULLARA, Plaintiff and Appellant, v. ALEXIS BURCHETT and UNIVERSITY OF SOUTHERN CALIFORNIA, Defendants and Respondents.	B286514 Los Angeles County Super. Ct. No. BC667180

APPEAL from a judgment of the Superior Court of Los Angeles County, Samantha P. Jessner, Judge. Affirmed.

Carl Pullara, in pro. per., for Plaintiff and Appellant.

Tantalo & Adler, Michael S. Adler and Joel M. Tantalo for Defendants and Respondents.

INTRODUCTION

Code of Civil Procedure section 425.16[1] (anti-SLAPP statute) provides a mechanism to resolve, at an early stage of litigation, lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The anti-SLAPP statute allows a defendant to bring a special motion to strike a claim, or portions of a claim, targeted at protected speech or conduct. Once the defendant shows its actions are protected under the anti-SLAPP statute, the plaintiff must then produce prima facie evidence supporting its claim, i.e., must demonstrate a probability of success. If the plaintiff fails, the claim will be dismissed.

Plaintiff and appellant Carl Pullara (plaintiff), who is self-represented on appeal, appeals from the trial court's order granting the special motion to strike brought by defendants and respondents Alexis Burchett and University of Southern California (USC) (collectively defendants). The complaint included causes of action for defamation, defamation per se, intentional infliction of emotional distress, and negligent infliction of emotional distress and generally alleged that Burchett, an employee of USC, falsely reported to police that plaintiff had made a threatening remark during a telephone conversation with a student working in the Provost's office.

The trial court found the conduct at issue—filing a police report—was protected under the anti-SLAPP statute. Furthermore, the court concluded plaintiff had not come forward with any admissible evidence suggesting he might be able to

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[1] All undesignated statutory references are to the Code of Civil Procedure.

prevail on his claims if they were to proceed. We agree and affirm.

FACTS AND PROCEDURAL BACKGROUND

According to the operative complaint, plaintiff graduated from USC in 2005. After graduation, however, he was not permitted to use USC's online job database for TV production. Plaintiff attempted to contact the Provost by phone to address this issue and was assisted first by Burchett and later by a student working in the office. The complaint describes Burchett as "uncooperative" and the student as "not a proficient English speaker." Plaintiff alleges that while he was speaking to the student worker, he attempted to explain that he had previously been falsely accused by others at USC of having a gun. The worker, "due to his poor grasp of the English language, misunderstood that Plaintiff was trying to explain why he didn't want to speak with" a different department. The student "then told people in the office," including Burchett, "that someone on the phone said the word gun." Approximately one week later, Burchett "filed a police report accusing Plaintiff of constantly calling USC and making threats." The complaint named Burchett and USC as defendants and asserted four causes of action: defamation, defamation per se, intentional infliction of emotional distress, and negligent infliction of emotional distress.

Defendants promptly filed a special motion to strike under the anti-SLAPP statute. They argued plaintiff could not prevail on the merits of the case because Burchett never filed a police report and never made any false statements to the police. Further, and in any event, defendants argued that filing a police report is conduct that is absolutely privileged. The court granted the motion and this timely appeal followed.

DISCUSSION

Plaintiff claims the court erroneously granted defendants' special motion to strike all causes of action in his complaint. We disagree.

1. Plaintiff failed to demonstrate error in the court's ruling on the anti-SLAPP motion.

As noted, plaintiff represents himself on appeal. Nonetheless, he is bound to follow the most fundamental rule of appellate review which is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) To overcome this presumption, an appellant must provide a record that allows for meaningful review of the challenged order. (*Ibid.*) If the record does not include all the evidence and materials the trial court relied on in making its determination, we will not find error. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.) Rather, we will infer substantial evidence supports the court's findings. (*Ibid.*)

In addition, parties must provide citations to the appellate record directing the court to the supporting evidence for each factual assertion contained in that party's briefs. When an opening brief fails to make appropriate references to the record to support points urged on appeal, we may treat those points as waived or forfeited. (See, e.g., *Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368,

384; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 779–801 [several contentions on appeal "forfeited" because appellant failed to provide a single record citation demonstrating it raised those contentions at trial].) Further, "an appellant must present argument and authorities on each point to which error is asserted or else the issue is waived." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) Matters not properly raised or that lack adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.) In short, an appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557.)

An appellant has the burden not only to show error but prejudice from that error. (Cal. Const., art. VI, § 13.) If an appellant fails to satisfy that burden, his argument will be rejected on appeal. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) "[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.] Nor will this court act as counsel for appellant by furnishing a legal argument as to how the trial court's ruling was prejudicial. [Citations.]" (*Ibid.*) And it is well established that " '[w]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations].' [Citations.]" (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1056.)

Plaintiff's briefing is insufficient on each of these grounds. His opening brief includes pages and pages of asserted "facts" that are neither alleged in the complaint nor supported by the

appellate record. And inexplicably, plaintiff's only legal analysis concerns the standard of review following the grant of a motion for *summary judgment*. He provides no legal authority or argument concerning the only relevant issue: the court's ruling on defendants' anti-SLAPP motion. Instead, plaintiff purports to explain why the unsupported facts he sets forth constitute malicious prosecution, obstruction of justice (under federal law), and "vexatious litigation" under section 391, subdivision (b)(2).[2] His complaint, however, does not include those claims.

In accordance with the appellate law principles just stated, we could conclude plaintiff failed to meet his burden to demonstrate error and affirm the court's ruling without further discussion. However, because plaintiff's arguments are easily refuted, we address them briefly.

Finally, we note plaintiff asserted four causes of action in his complaint but limits his discussion to his claim of defamation per se. Accordingly, he has forfeited any challenge to the court's ruling on his remaining claims. (See, e.g., *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4 [issue not raised on appeal deemed forfeited or waived]; *Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1177–1178 ["[g]enerally, appellants forfeit or

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[2] That subdivision defines a "vexatious litigant" to include a person who, "[a]fter a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined."

abandon contentions of error regarding the dismissal of a cause of action by failing to raise or address the contentions in their briefs on appeal"]; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 ["[c]ourts will ordinarily treat the appellant's failure to raise an issue in his or her opening brief as a waiver of that challenge"].)

2. The court properly granted the special motion to strike the complaint under Code of Civil Procedure section 426.15.

2.1. Standard of Review

In an appeal from an order granting or denying a motion to strike under section 425.16, the standard of review is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) In considering the pleadings and supporting and opposing declarations, we do not make credibility determinations or compare the weight of the evidence. Instead, we accept the opposing party's evidence as true and evaluate the moving party's evidence only to determine if it has defeated the opposing party's evidence as a matter of law. (*Ibid.*)

2.2. The Anti-SLAPP Statute

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

Our Supreme Court has clarified the scope of the anti-SLAPP statute: "The anti-SLAPP statute does not insulate

defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. [The Supreme Court has] described this second step as a 'summary-judgment-like procedure.' [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] '[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted (*Baral*).)

2.3. First Prong: The conduct at issue—filing a police report—is activity protected under the anti-SLAPP statute.

Section 425.16 provides that an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under

consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

Filing a police report—even if it is alleged to be false—is plainly within the scope of the anti-SLAPP statute unless it is undisputed that the report was, in fact, false. (See, e.g., *Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 966 ["the making of allegedly false police reports also can be protected petitioning activity under the first prong of the anti-SLAPP statute if the falsity of the report is controverted"]; *Comstock v. Aber* (2012) 212 Cal.App.4th 931, 941 ["[t]he law is that communications to the police are within SLAPP"]; *Lefebvre v. Lefebvre* (2011) 199 Cal.App.4th 696, 703–705 [because wife's report to the police was admittedly false and therefore illegal, it did not constitute conduct in furtherance of her constitutional rights of petition or free speech]; *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1512 [the defendant's allegedly false report to police was deemed protected activity because there was no uncontroverted evidence showing the report to be false].)

Here, defendants assert that statements to the police are protected under the anti-SLAPP statute. And they supported their anti-SLAPP motion with a declaration by Burchett attesting that she did not speak with any law enforcement personnel about plaintiff, file a police report (let alone a *false* police report) about plaintiff, or make false statements to the police about plaintiff.

This evidence was sufficient to shift the burden to plaintiff to demonstrate that his claim for defamation per se has minimal merit.

2.4. Second Prong: Plaintiff did not establish that his claim has even minimal merit.

Under the second prong of the section 425.16 analysis, plaintiff was required to demonstrate a probability of prevailing on his claim for defamation per se. (*Baral, supra*, 1 Cal.5th at pp. 384–385.) We conclude, as the trial court did, that plaintiff failed to produce any admissible evidence to support his claim of defamation per se.

Defamation includes both libel (often written words) and slander (typically spoken words). (Civ. Code, §§ 45, 46.) California recognizes two types of defamation: defamation per se and defamation per quod. "The distinction has been described as follows: 'If no reasonable reader would perceive in a false and unprivileged publication a meaning which tended to injure the subject's reputation in any of the enumerated respects, then there is no libel at all. If such a reader would perceive a defamatory meaning without extrinsic aid beyond his or her own intelligence and common sense, then (under section 45a and the cases, such as *MacLeod* [*v. Tribune Publishing Co.* (1959) 52 Cal.2d 536], which have construed it) there is a libel per se. But if the reader would be able to recognize a defamatory meaning only by virtue of his or her knowledge of specific facts and circumstances, extrinsic to the publication, which are not matters of common knowledge rationally attributable to all reasonable persons, then (under the same authorities) the libel cannot be libel per se but will be libel *per quod*.' [Citation.]"

(*Bartholomew v. YouTube, LLC* (2017) 17 Cal.App.5th 1217, 1226–1227 (*Bartholomew*).)

Pertinent here, " '[p]erhaps the clearest example of libel per se is an accusation of crime.' [Citation.]" (*Bartholomew*, *supra*, 17 Cal.App.5th at p. 1228.) The complaint alleges Burchett "filed a false police report which stated that Plaintiff threatened Mr. Wang, and/or others at USC, with a firearm," "falsely stated to Detective Franco, and/or other persons at the Los Angeles Police Department that Plaintiff had said to Mr. Wang 'I have a gun and I am not afraid to use it on campus,' " and "published the false statements by making written statements to Plaintiff's current girlfriend and others." On this point, defendants provided a declaration from Burchett stating "I did not speak to the police or other law enforcement personnel, including from USC's Department of Public Safety, concerning Mr. Pullara. I did not file a police report of any kind concerning Mr. Pullara. I did not report Mr. Pullara to the police as having said, 'I have a gun and I am not afraid to use it on campus.' [¶] If I had spoken with the police regarding Mr. Pullara (which I did not), I would not have intentionally made any false statements or made any statements with any malice towards Mr. Pullara."

In support of his opposition to the anti-SLAPP motion, plaintiff submitted his own declaration and a declaration by his counsel, Jeremy Tissot. Tissot stated that he had requested a copy of a police report, D.R. number 161309895, from the Los Angeles Police Department (LAPD). Pursuant to Government Code section 6254, the LAPD denied his request. He explained further: "Because we have not been able to see a copy of the police report and thus have not been able to examine the contents of the report, it is my professional opinion that any decision as to

Defendants' anti-SLAPP motion is premature, as the [anti-SLAPP] statute automatically stays discovery. Without an opportunity to conduct discovery, at least in order to subpoena the police report, Plaintiff will be unjustly prejudiced, as the contents of the report are material in this particular matter and essential towards rendering a proper decision on this motion."

As to plaintiff's declaration, the court sustained a variety of objections asserted by defendants—rulings which are not challenged in this appeal. As modified by the court's evidentiary ruling, the declaration does not identify any specific statements made by anyone about plaintiff. Plaintiff also conceded he had not seen a copy of the police report purportedly containing statements made by Burchett. In short, plaintiff produced no admissible evidence to support the allegations in his complaint.

At the hearing on the anti-SLAPP motion, plaintiff's counsel argued that plaintiff should be allowed to obtain the police report and conduct some "basic discovery." Generally, all discovery is stayed while an anti-SLAPP motion is pending. But as the court pointed out, the anti-SLAPP statute gives the court the authority to allow limited discovery in appropriate circumstances: "All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision." (§ 425.16, subd. (g).) Counsel conceded he had not asked the court for permission to conduct discovery.

We conclude plaintiff's failure to obtain a copy of the police report that is the subject of his complaint coupled with his failure

to offer any other admissible evidence in support of his claim required the court to conclude, as it did, that plaintiff failed to demonstrate that his defamation per se claim had minimal merit.

DISPOSITION

The judgment is affirmed. Burchett and the University of Southern California shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

DHANIDINA, J.

MURILLO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.